IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/03/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.804 of 1997

Ravichandran ... Appellant /
Accused

-Vs-

Deputy Superintendent of
Police, Annamalai Nagar
Police Station,
Chidambaram. ... Respondent

This Criminal Appeal arises out of the judgment dated
23.10.1997 made in S.C.No.468 of 1992 on the file of Assistant Sessions Judge,
Chidambaram.

!For appellant : Mr. A.Padmanabhan

^For respondent : Mr. A.N.Thambidurai,
Government Advocate,
(Crl. Side)

:J U D G M E N T

Accused in S.C.No.468 of 1992 on the file of Assistant
Sessions Judge, Chidambaram is the Appellant. By the Judgment dated
23.10.1997, the learned Assistant Sessions Judge convicted Appellant / Accused
under Sec.304-B I.P.C. for causing death of his wife Subadra subjecting her
to dowry harassment. The trail Court acquitted the Accused for the charge
under Sec.306 I.P.C.

2. The charges against the Accused and the findings of the
trial Court are as noted below:-

Charge Number
Gist of the Charge

Finding
sentence

1
Under Sec. 304 - B IPC (2 counts)

for causing death of his wife Subadra subjecting her to cruelty and harassment in connection with dowry.
and also for the death of his child Saranya.
Convicted under Sec.304-B I.P.C.(2 counts)
Sentenced to undergo Rigorous Imprisonment for eight years.
2
Under Sec. 306 IPC
for abetment to commit suicide by Subadra and for the death of child Saranya.
Not guilty

Acquitted.

3. Common facts which led to this appeal could briefly be stated thus:- Deceased Subadra is the daughter of P.W.8 - Shanmugasundaram and P.W.9 - Saroja. The Accused was working as Assistant in the Bank of Madura, Chidambaram Branch. Subadra was given in marriage to the Accused. The marriage of the Accused and deceased was solemnized on 08.12.1989 in Srinivasa Kalyana Mandapam, Tanj ore. At the time of marriage, Subadra was given 20 sovereigns jewels and cash of Rs.40,000/- and also household utensils worth about Rs.30,000/-. The couple had one girl child by name Saranya. Accused and deceased Subadra were living in Door No.17, Sadagopa Nagar, Kothangudi, Chidambaram within the jurisdiction of Annamalai Nagar Police Station. One Alamelu is the owner of the said house. She was residing in the ground floor; while the Accused and deceased Subadra were living in the first floor.

4. Case of prosecution is that the deceased Subadra entertained doubts on the illicit intimacy of the Accused with the said Alamelu, which has resulted in frequent quarrel between them. P.Ws.8 and 9 - Parents of the deceased Subadra thought of shifting their residence from Door No.17, Sadagopa Nagar. P.W.8 - father of deceased was then a retired Personal Assistant to District Collector. He (P.W.8) has promised to buy a plot for the couple either at Kumbakonam or Mayavaram. The Accused was demanding to purchase the plot. Demanding for plot, the Accused was treating deceased Subadra cruelly. On 14.05.1992, when P.W.8 visited his daughter, she has informed him that the Accused was treating her cruelly demanding for plot.

5. Occurrence. On 16.05.1992 - 2.00 p.m., Subadra poured kerosene on herself and set fire to herself. She has also poured kerosene on her child Saranya and set fire to her. Upon hearing the alarm raised by Subadra - "Inah fhg;ghj;J';f. Inah fhg;ghj;J';f", the neighbours rushed to the scene of occurrence. P.W.1 - Sundaravadivelu, resident of Door No.16, P.W.2 - Palanivelu, resident of Door No.24 of Sadagopa Nagar heard the alarm and went to the house and found Subadra burnt and dead. The child Saranya, who sustained burn injuries was found to be struggling for life. P.Ws.1 and 2 have immediately taken the child to Chidambaram Government Hospital. Child Saranya also died of burn injuries at 6.00 p.m. on the same day.

6. Ex.P.1 - Report by P.W.3 - V.A.O. P.W.3 (Gunasekaran) - Village Administrative Officer got information that one female - Subadra died of burn injuries and the child Saranya sustained burn injuries and struggling

for life. After confirming the information, P.W.3 sent Ex.P.1 - Report to Annamalainagar Police Station.

7. Registration of the case. P.W.18 - Sub Inspector of Police received Ex.P.1 - Report from P.W.3 - V.A.O. On that basis, a case was registered in Crime No.140 of 1992 under Sec.174 Crl.P.C. under Ex.P.8 - First Information Report. Child Saranya died of burn injuries at 6.00 p.m. On receipt of Death Intimation of child Saranya, P.W.18 - S.I. of Police altered the case into Sec.302 I.P.C. under Ex.P.9 - Express Report.

8. Since death of Subadra was within 2-1/2 years of marriage, Revenue Divisional Officer was requested to hold Inquest and to take up initial investigation. P.W.19 - R.D.O (Vridhachalam), who was incharge of Chidambaram had taken up the investigation.

9. Inquest and initial Investigation. On the night of 16.05.1992, P.W.19 - R.D.O. had taken up the investigation. Parents of Subadra viz., P.Ws.8 and 9 and other witnesses (P.W.1 - Sundaravadivelu, P.W.3 - Gunasekaran and one Ganesan) wer and their statements were recorded. Inquest was held on the body of deceased Subadra examining the above witnesses in the presence of Panchayatdars. Ex.P.10 is the Inquest Report. In his report (Ex.P.18), P.W.19 - R.D.O. concluded that the death might be homicidal or suicidal due to Dowry Harassment and Domestic Quarrel. P.W.19 has directed further enquiry. After the inquest, the bodies of Subadra and child Saranya were sent for Autopsy.

10. Post-mortem. P.W.20 - Dr.Amanullah conducted Autopsy on the body of the child Saranya. Noting burn injuries, P.W.20 issued Ex.P.1 9 - Post-mortem Certificate. P.W.14 - Dr.Balachandran conducted Autopsy on the

body of deceased Subadra. 90% to 100% burn injuries were noted on the person of Subadra. Opining that the death was due to burn injuries, P.W.14 issued Ex.P.7 - Post - Mortem Certificate.

11. Further Investigation. P.W.21 - Assistant Superintendent of Police has taken up further investigation. The scene of occurrence - residential house of the Accused in Sadagopa Nagar was inspected. Ex.P.2 - Observation Mahazar and Ex.P.20 - Rough Plan were prepared. Upon examination of witnesses, P.W.21 - A.S.P. had initially altered the case to Sec.302 I.P.C. under Ex.P.24 - Report. Then, P.W.21 changed the case to Ss.304-B and 306 I.P.C. for dowry death and abetment to commit suicide under Ex.P.25 - Report. On completion of investigation, charge sheet was filed against the Accused on 21.10.1992.

12. To substantiate the charge against the Accused, in the trial Court, prosecution has examined P.Ws.1 to 21. Exs.P.1 to 25 were marked. M.O.1 was produced. The Accused was questioned under Sec.313 Crl.P.C. about the incriminating circumstances and evidence. The Accused denied the same. The Accused filed statement in writing denying any illicit intimacy between him and the said Alamelu. He has also denied having

controlled his wife from writing letters to her parents. Denying the evidence of P.Ws.8 to 12, the Accused pleaded that he has never demanded any house or plot from the deceased and never illtreated her.

13. Upon consideration of the evidence, the trial Court found that there was demand of dowry in the form of insistence to purchase a plot and that the deceased Subadra was subjected to harassment. Evidence of parents of the deceased (P.Ws.8 and 9) was accepted as reliable and on their evidence, it was held that the deceased was subjected to harassment and cruelty by the Accused in insisting for plot. Placing much reliance upon Ex.P.5 - Suicidal Note, the learned Assistant Sessions Judge found that Ex.P.5 clearly brings out the frustration and dejection in the mind of Subadra. Finding that there was demand of dowry and that deceased Subadra was subjected to harassment and cruelty in insistence for purchase of a plot, the trial Court convicted the Accused under Sec.304-B I.P.C. and sentenced him as aforesaid in para (2).

14. The reasonings and the conviction are assailed by the Accused contending that in the absence of any evidence of demand of dowry, the conviction under Sec.304-B I.P.C. is unsustainable. Seriously assailing the evidence of P.Ws.8 and 9 - Parents of the deceased, the learned counsel for the Appellant / Accused interalia raised the following contentions:-

(i) Evidence of P.Ws.8 and 9 and the letter - Ex.P.3 and Suicidal Notes - Exs.P.4 and P.5 - do not bring out the demand of dowry or establish the cruelty;

(ii) P.Ws.8 and 9 have developed ill-will and grudge towards their son-in-law, whom they consider responsible for the death of their daughter and their evidence suffers from improvements and infirmities and the trial Court erred in basing the conviction on the highly interested testimony of P.Ws.8 and 9;

(iii) Exs.P.4 and P.5 - Suicidal Notes do not contain that the deceased suffered cruelty at the hands of her husband.

Contending that the evidence adduced by the prosecution is not sufficient to establish the essential ingredients of Sec.304-B I.P.C., the learned counsel for the Appellant / Accused submitted that the trial Court erred in convicting the Accused.

15. Countering the arguments of the Appellant / Accused and taking me through the evidence of P.Ws.8 and 9, the learned Government Advocate contended that the demand of dowry and that Subadra was subjected to dowry harassment and cruelty are well proved by the evidence of P.Ws.8 and 9. It is further submitted that the misunderstanding and differences between the deceased and the Accused due to illicit intimacy of the Accused with the said Alamelu is well proved, which has caused the serious frustration in the mind of the deceased and which has driven her to commit suicide and the trial Court has correctly convicted the Accused. It is further submitted that the

reasonings of the trial Court for convicting the Accused are unassailable warranting no interference.

16. Upon careful reassessment of the evidence and materials on record, Judgment of the trial Court and submissions of both sides, the following points arise for consideration in this appeal:-

(i) Whether the prosecution has proved that Subadra was subjected to cruelty and harassment in connection with dowry "soon before her death"?

(ii) Whether the frustration and dejection caused in the mind of deceased Subadra due to the alleged friendship between the Accused and Alamelu would fall within the purview of Sec. 304-B I.P.C. ?

(iii) Whether the conviction of the Accused under Sec.304-B I.P.C. is sustainable ?

17. Case of prosecution proceeds on these common grounds:-
Deceased Subadra is the daughter of P.W.8 - Shanmugasundaram. Accused was working as Assistant in the Bank of Madura, Chidambaram Branch. Marriage of the Accused and deceased was solemnized on 08.12.1989 at Srinivasa Kalyana Mandapam, Tanjore. At the time of marriage, deceased Subadra was given 20 sovereigns jewels, cash of Rs.40,000/- and household utensils worth about Rs.30,000/-. Accused and deceased were living in Door No.17, Sadagopa Nagar, Kothangudi. The said house belongs to one Alamelu, who is none other than the Manager of the Bank of Madura, Chidambaram Branch, where the Accused was working. Alamelu was residing in the ground floor, while the Accused and deceased were living in the first floor. After some time, Alamelu was transferred to Madras. After her transfer to Madras, Alamelu was frequently visiting Sadagopa Nagar. During her visit, she used to stay in the first floor in a room, where deceased and Accused were living. From the evidence, it is brought on record that the deceased had serious doubts about the illicit intimacy and friendship of the Accused with the said Alamelu, which has caused stress and strain in the matrimonial relationship which resulted in frequent quarrel.

18. On 16.05.1992 - 2.00 p.m., Subadra died of self-immolation. She also poured kerosene on her child Saranya, aged about 1-1/2 years and set fire to the child. For the death of Subadra and Saranya, initially a case of 'Suspicious death' was registered in Crime No.140 of 1992 under Sec.174 Crl.P.C. under Ex.P.8 - First Information Report. Death was within period of seven years.

19. By Sec.113-B Evidence Act, the Court is to raise a presumption of Dowry death if the same has taken place within seven years of marriage and there is evidence of the women having been subjected to cruelty or harassment. Presumption under Sec.113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death.

20. Elaborately discussing Sec.113-B of the Evidence Act and

Sec.30 4(B) I.P.C. and the necessity of proving the expression "soon before her death" in 2003 SCC (Crl.) 2016 - Hiralal v. State, the Supreme Court held thus:-

"A conjoint reading of Section 113-B of the Evidence Act and Section 304-B I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty and harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of " death occurring otherwise than in normal circumstances ". The expression " Soon before " is very relevant where Section 113-B of the Evidence Act and Section 304-B I.P.C. are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be let by the prosecution. " Soon before" is a relative term and it would depend upon the circumstances of each case and no strait jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression " Soon before her death " used in the substantive Section 30 4-B I.P.C. and Section 113-B of the Evidence Act is present with the ideal of proximity test. No definite period has been indicated and the expression " Soon before " is not defined. A reference to the expression " Soon before " used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods " Soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession ". The determination of the period which can come within the term "Soon before " is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression " Soon before " would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence." (Emphasis added)

The essential ingredient of Sec.304-B I.P.C. "soon before death" was also emphasised in JT 1997(3) SC 91 - Sham Lal v. State of Haryana followed by the single Judge of this Court reported in 1999-1-LW (Crl) 127 - Famaiah v. State.

21. Now the main point to be determined is whether there was demand of dowry and whether deceased Subadra was subjected to illtreatment and cruelty having immediate proximity to the date of death of deceased Subadra. Elaborate consideration of the evidence and determination of this point has become necessary in this appeal, since the trial Court has not tested the evidence in the light of the essential ingredients.

22. Case of prosecution is that demand of dowry was in the

form of "to purchase a plot and that Subadra was subjected to ill-treatment and cruelty ". Prosecution relies upon the following evidence:-

(i) evidence of parents of Subadra - P.Ws.8 and 9 and the evidence of P.Ws.10 and 11, who have married the sisters of Subadra;

(ii) Ex.P.3 - letter and Exs.P.4 and P.5 - Suicidal Notes;

(iii) evidence of P.W.5 (Amudha), a co-resident in Door No.17 in the ground floor and evidence of P.W.7 (Annakkili), the Servant-maid of the Accused and deceased;

(iv) P.W.19 - R.D.O's Report - Ex.P.18 and the basis of his opinion.

It is to be considered whether the above evidence and facts are firmly established in bringing home guilt of the Accused for sustaining the conviction for dowry death.

23. We may firstly refer to the evidence of P.W.5 (Amudha) - a co-resident, residing in the ground floor after Alamelu has vacated the house in the ground floor. P.W.7 - Annakkili, is said to be the Servant-maid in the house of the Accused and deceased Subadra. P.W.5 was examined to bring home the point that even after vacating the house, the said Alamelu used to visit the house of Accused and deceased in Chidambaram and would stay in the first floor and that the she used to go about in a Scooter along with the Accused. But P.W.5 had turned hostile. Her evidence is confined to the limited extent of saying that she resided in the first floor of Door No.17, Sadagopa Nagar, which is owned by Alamelu. On the material aspect that Alamelu used to frequently visit the house of Accused and that she insisted to send child Saranya to Madras, which resulted in frequent quarrel, P.W.5 had turned hostile. Evidence of P.W.5 is of no assistance to the prosecution.

24. Likewise, P.W.7 - Annakkili, who is said to be the Servantmaid of the deceased Subadra and Accused was examined to speak about the frequent quarrel between the Accused and deceased Subadra on account of the frequent visit of Alamelu. P.W.7 also turned hostile denying being employed in the house of the Accused. With the hostility of P.W.7, the prosecution is further handicapped in bringing the evidence on the aspect of cruelty from independent source.

25. P.W.1 - Sundharavadivelu and P.W.2 - Palanivelu are the residents of Door No.16 and 24 of Sadagopa Nagar respectively. P.Ws.1 and 2 are the only witnesses to occurrence. According to them, on 16.05 .1992, they heard the alarm raised by Subadra, Inah fhg;ghj;J';f. Inah fhg;ghj;J';f and went to the house and found Subadra burnt and dead and the child Saranya struggling for life. Thus the evidence of neighbours, viz. P.Ws.1 and 2 is also of no consequence to establish the cruelty.

26. Prosecution case revolves around the evidence of parents

of deceased Subadra - P.Ws.8 and 9. Subadra was given in marriage to the Accused on 08.12.1989. Even within 2-1/2 years of marriage, they lost their daughter and grand-daughter. In view of the close relationship and their affection towards Subadra, P.Ws.8 and 9 would naturally have a tendency to exaggerate the facts. The love and affection for the deceased would create a psychological hatred in their minds against their son-in-law, whom they consider responsible for the death of Subadra. Therefore, Court has to examine the evidence of P.Ws.8 and 9 with great care and caution. In A.I.R. 1984 SUPREME COURT 1622 - Sharad v. State of Maharashtra, the Supreme Court has laid down that the evidence of the parents is to be scrutinised with care and caution to exclude exaggeration and laid thus:-

" In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Not that this is done consciously but even unconsciously the love and affection for the deceased would create a psychological hatred against the supposed murderer and, therefore, the Court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they would be guided by a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it. "

Therefore, evidence of P.Ws.8 and 9 is to be carefully scrutinised to find out whether their evidence satisfies the essential requirements of Sec.304-B I.P.C.

27. Before adverting to the evidence, we may refer to the background and status of P.W.8 - Shanmugasundaram. P.W.8 is a fairly educated person. He is a retired Personal Assistant to District Collector, Pudukkottai. P.W.8 being an official of the Revenue Department, is worldly wise more familiar with the dowry death related cases and the procedure therefor. Firstly, we may refer to his tendency in trying to make out a case of Homicide in the initial stages of investigation. That apart, he was also trying to implicate the said Alamelu as co-accused. His tendency to implicate the Accused and Alamelu as accused in a case of Homicide is clearly manifested in Ex.P.11 - his statement recorded by the Tahsildar.

28. In Ex.P.11 - Statement before the Tahsildar, P.W.8 - Shanmugasundaram had stated thus:-

(VERNACULAR OMITTED)

29. P.W.9 (Saroja) - mother of the deceased Subadra had also reiterated the same in Ex.P.17 - her Statement before the Tahsildar. For the purpose of showing their tendency to exaggerate and adding facts from out of their thinking, it is necessary to extract the relevant part of the statement of P.W.9 in Ex.P.11 - Statement which is as under:-

(VERNACULAR OMITTED)

Thus, in their statements before Tahsildar, P.Ws.8 and 9 have stated that Subadra is not a coward to commit suicide and she would have only been murdered. Such statement emanating from the thinking of P.Ws.8 and 9 is not based on any material. In fact, the same is opposed to Ex.P.5 - Suicidal Note itself. Subadra herself has left the Suicidal Note stating that she herself is responsible for ending her life by committing suicide. The tendency of P.Ws.8 and 9 in exaggerating or adding facts is to be borne in mind while scrutinising their evidence.

30. Ex.P.18 is the report of P.W.19 - Revenue Divisional Officer. On the basis of statements of P.Ws.8 and 9, P.W.19 - R.D.O. also formed an opinion that death of Subadra might be Homicide. Ex.P.18 - Report refers to statement of one Johnsirani for forming opinion of " Death of Subadra as Homicide ". The statement of Johnsirani is not before the Court; nor was she examined in the Court. Opinion of P.W.19 - R.D.O. in Ex.P.10 reads thus:-

(VERNACULAR OMITTED)

The above opinion of P.W.19 - R.D.O. in Ex.P.10 is absolutely unsupported by any other material.

31. In the initial stages of the investigation, P.W.8 - father of the deceased Subadra has taken vigorous steps to implead Alamelu as co-accused. In his cross-examination, P.W.8 has admitted having preferred petition before the Sessions Court, Cuddalore and thereafter, before the High Court for impleading the said Alamelu as co-accused. That he bore deep grudge towards the Accused is also clear from his conduct in sending complaints to Tamil Nadu Chief Minister and the Chief Secretary. He has also sent complaints alleging dowry death to the higher Police Officers. Those complaints were sent immediately on the next day of occurrence. Considering the hatred in the mind of P. W.8 towards the Accused and his tendency to make improvements, cautious approach has to be adopted in analysing his evidence. But the trial Court had not kept with cautious approach in assessing the evidence of P.Ws.8 and 9. The trial Court seems to have virtually accepted the evidence of P.Ws.8 and 9 without insisting for corroboration from other independent source and circumstances.

32. In the above backdrop, let us consider the evidence of P.Ws.8 and 9 and P.Ws.10 and 11. Of course, the marriage was an arranged one. At the time of marriage, 20 sovereigns jewels, cash of Rs.40,000/- and household utensils worth about Rs.30,000/- were given. Accused was employed in Bank of Madura, Chidambaram Branch. The said Alamelu is said to have arranged for the marriage. While the Accused and deceased Subadra were living in Door No.17, Sadagopa Nagar, the deceased is said to have entertained doubts on the illicit intimacy of the Accused with Alamelu, which resulted in frequent quarrel between them. It is alleged that Subadra has also seen the Accused and the said Alamelu in a compromising position, which she had

informed to her parents. According to P.Ws.8 and 9, Subadra has frequently complained of the quarrel between her and Accused on account of his close relationship with Alamelu. The entire evidence of cruelty and illtreatment thus proceeds on the footing that the frequent quarrel was due to the close friendship of Accused with Alamelu. Absolutely there is no evidence on the demand of dowry and that Subadra was subjected to ill-treatment and cruelty in connection with dowry harassment having proximate link with the occurrence.

33. Proposal for purchase of plot. The only instance which P.Ws.8 and 9 refers in their evidence is the proposal for purchase of plot in Kumbakoman or in Tanjore. This proposal was arrived at after having talked with the parents of the Accused. According to P.W.8 - Shanmugasundaram, he had complained about the conduct of the Accused to his parents and sought their intervention to settle the problem of his close relationship with Alamelu for which the parents of the accused is said to have suggested for purchase of plot in some other place so that the close relationship of Alamelu and Accused would be severed. P.W.8 has also agreed to purchase a plot. As per his statement, vd; kfs; ed;whf thH ntz;Lk; vd;gjw;fhf ehd; Vw;ghL bra;tjhfr; brhd; ndd;/ Thus the proposal for purchase of plot is of own volition and willingness of P.W.8 - father of the deceased to enable Subadra to live happily with the Accused. There is no demand by accused to purchase the plot.

34. In their evidence, P.Ws.8 and 9 have spoken about a particular instance. When they went to Sadagopa Nagar, they found the house locked. After enquiring the neighbours and being learnt that Subadra and child Saranya had been to Vadoor (house of the parents of the Accused), P.Ws.8 and 9 went to Vadoor. According to P.Ws.8 and 9, Subadra had uncontrollably wept alleging that she was confined in the house of the parents of the Accused and pleaded her parents (P.Ws.8 and 9) to purchase a plot soon. P.Ws.8 and 9 pacified her and left Vadoor. Had there been any such ill-treatment and confinement in Vadoor, P.Ws.8 and 9 would have definitely mentioned the same in their earlier statements - Ex.P.11 and Ex.P.17 before P.W.19 - R.D.O. But they did not do so. P.Ws.8 and 9 have only stated about:-

(i) illicit intimacy of the Accused and Alamelu;

(ii) proposal to purchase a plot and shifting their residence;

(iii)frequent quarrel between the accused and deceased on account of illicit intimacy of the accused with Alamelu.

The evidence of P.Ws.8 and 9 in the witness box on demand to purchase plot and that there was cruelty on that score is nothing but an improved version. No weight could be attached to their evidence that there was demand of dowry in the form of purchase of plot and that Subadra was subjected to cruelty.

35. P.Ws.8 and 9 referred to their stay in the house at Door No.17 , Sadagopa Nagar on 14.05.1992 - two days prior to the occurrence. According to them, for attending a marriage in Chidambaram on 15.05.19 92,

they went to Sadagopa Nagar and stayed at the house of their daughter on the night of 14.05.1992. At that time, deceased Subadra is said to have complained to P.Ws.8 and 9 on the alleged beating by the Accused in the delay in getting the plot. P.Ws.8 and 9 have stated that they pacified Subadra and returned back. It is pertinent to note that had there been any such complaint by Subadra, it would have been fresh in the mind of P.W.8 when he was examined by P.W.19 - R.D.O. But P.W.8 has not stated anything about the occurrence on the night of 14.05.1992. In Ex.P.17 - Statement, P.W.9 only has stated about their stay on the night of 14.05.1992 in Sadagopa Nagar and the complaint of Subadra that the deceased was ill-treating her and subjecting her cruelly. Even in the earlier statement of P.W.9, the alleged cruelty is not in connection with demand of dowry. Subadra is said to have complained the conduct of the Accused in threatening her and in trying to take the child Saranya to Madras and keep her in the custody of Alamelu. Thus, it emerges that the mental agony caused to deceased Subadra was only on account of the contact of the Accused with the said Alamelu. Evidence of P.Ws.8 and 9 is absolutely wanting to establish demand of dowry. The proposal for purchase of plot in Kumbakoman or in Tanjore is only voluntary.

36. P.Ws.10 - Venkatajalam and P.W.11 - Natarajan have married sisters of deceased Subadra. According to P.W.11, he had been to Chidambaram about one week prior to the occurrence and Subadra informed him about the problems in the delay in purchase of house or plot. P.Ws.1 0 and 11 are also interested witnesses. As discussed earlier, the purchase of plot or house is the proposal of the family members to sever his ties (accused) with Alamelu. On the evidence of P.Ws.10 and 11 , no cruelty or ill-treatment could be attributed to the Accused.

37. Ex.P.3 is the letter written by deceased Subadra on 16.05.1992 about the restriction placed on her in visiting Tanjore (Parents house). In Ex.P.3 also Subadra only refers her resentment against Alamelu, that Alamelu was influencing the Accused to impose condition not to send her to Tanjore. Extract of the above is as follows:-

(VERNACULAR OMITTED)

Witnesses have admitted that the word " nga; " in Ex.P.3 refers to the said Alamelu. Nothing is forthcoming from Ex.P.3 on the alleged demand of dowry or that Subadra was subjected to cruelty. Likewise in Exs.P.4 and P.5 - Suicidal Notes to her parents and to the Accused respectively, nowhere is there any iota of indication on demand of dowry. In Ex.P.5 - Suicidal Note, Subadra has only stated, " vd;Dila Kothy; ahUk; fc&;lg;glnth. tUj;jg;glnth ntz;lhk;/ eP';fs; vy;nyhUk; ed;whf thHntz;Lk; vd;W epidf;fpnwd; ". Evidence of P.Ws.8 and 9 and the letter Ex.P.3 and Suicidal Notes - Exs.P.4 and P.5 do not contain any convincing and satisfactory evidence about the demand for dowry or cruelty.

38. It appears from the evidence that there was strain in the matrimonial relationship only due to the close friendship of the Accused with Alamelu. It is brought on evidence that Alamelu visited Chidambaram from 08.05.1992 - 10.05.1992 and the Accused joined her in going out, due to which

Subadra must have been greatly disturbed, driving her to commit the suicide and also setting fire to the child. Of course, the occurrence is a gruesome one. The Accused is mainly instrumental for causing such mental agony and dejection in the mind of Subadra driving her to commit suicide. But it cannot be the reason to convict the Accused for dowry death when the essential ingredients are not proved.

39. Of course, the conduct of the Accused clearly falls within the ambit of Sec.306 I.P.C. Though the trial Court framed the charge under Sec.306 I.P.C., unfortunately the trial Court had acquitted the Accused under Sec.306 I.P.C. Even in charge No.2 - abetment to commit suicide, the language proceeds on the footing of demand of dowry and the ill-treatment thereon. It is well proved that Subadra was harassed by the persistent conduct of the Accused in having close relationship with Alamelu. Direct nexus between cruelty and abetment to commit suicide is well proved. But, unfortunately, the trial Court has acquitted the Accused of this charge and proceeded to convict him under Sec.304-B I.P.C.

40. The conviction under Sec.304-B I.P.C. cannot be altered into Sec.306 I.P.C., since the essential ingredients are different. As against the acquittal of the Accused under Sec.306 I.P.C., the State has not preferred any appeal. At this distant point of time, this Court is not inclined to issue notice to the Accused to reverse the acquittal under Sec.306 I.P.C. Suffice it to point out that the trial Court erred in ignoring direct nexus of cruelty and suicide and erred in acquitting the Accused under Sec.306 I.P.C.

41. There is no satisfactory evidence on demand of dowry and that Subadra was subjected to ill-treatment and cruelty " soon before death " . Proximate live link between the demand and the cruelty prior to death is not convincingly established by the prosecution. Conviction of the Accused under Sec.304-B I.P.C. is not in conformity with the facts and evidence on record. Hence, the finding of guilt and the conviction of the Accused under Sec.304-B I.P.C. cannot be sustained and this appeal is to be allowed.

42. Therefore, the Judgment of Assistant Sessions Court, Chidambaram in S.C.No.468 of 1992 (dated 23.10.1997) convicting the Appellant / Accused under Sec.304-B I.P.C. (two counts) is set aside and this appeal is allowed. The Appellant / Accused is acquitted of the charge under Sec.304-B I.P.C.(2 counts).

Index:Yes
Internet:Yes

sbi

To

1. The Assistant Sessions Judge,
Chidambaram.

2. The Assistant Sessions Judge,
Chidambaram, Through

The Sessions Judge, Cuddalore.

3. The Superintendent,
Central Prison, Cuddalore.

4. The Deputy Superintendent of Police,
Annamalai Nagar Police Station,
Chidambaram.

5. The Public Prosecutor,
High Court, Chennai.